

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (3d) 130171-U

Order filed January 29, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

RAYMOND R.S. HEYDE, individually and	)	Appeal from the Circuit Court
as Trustee of the RAYMOND R.S. HEYDE	)	of the 10th Judicial Circuit
REVOCABLE TRUST,	)	Tazewell County, Illinois
	)	
Plaintiff-Appellant,	)	Appeal No. 3-13-0171
	)	Circuit No. 11-L-140
v.	)	
	)	
BRADLEY K. GLASSEY,	)	Honorable
	)	Paul Gilfillan,
Defendant-Appellee.	)	Judge, Presiding.

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PRESIDING JUSTICE LYTTON delivered the judgment of the court.  
Justices Holdridge and McDade concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Trial court properly dismissed plaintiff's complaint for professional negligence against appraiser hired by county because plaintiff could not establish that appraiser owed him a duty. Defendant was not entitled to sanctions on appeal where appeal was not frivolous.
- ¶ 2 After several years of disagreement between Tazewell county and plaintiff regarding the value of plaintiff's property, the Tazewell County Property Tax Review Board (Board) hired

defendant, an appraiser, to value plaintiff's property. Defendant prepared two reports for the Board and testified at hearings on behalf of the Board. Thereafter, plaintiff filed a complaint against defendant, alleging "real estate appraisal malpractice." Defendant filed a motion to dismiss plaintiff's complaint and for sanctions. The trial court granted defendant's motion to dismiss but denied his request for sanctions. Plaintiff appeals the dismissal of his complaint, and defendant seeks sanctions from plaintiff for his appeal. We affirm the trial court's dismissal of plaintiff's complaint and deny defendant's request for sanctions.

¶ 3 Since 2000, plaintiff has owned and resided in a single-family residence located at 17500 King Road, Danvers, in Tazewell County. Beginning in 2003 and continuing every year thereafter, plaintiff has objected to his Tazewell County property tax assessments. As a result, in 2008, the Board hired defendant to conduct an appraisal of plaintiff's property.

¶ 4 Defendant prepared a report in February 2008. The report states that it is "FOR: Tazewell Co. Property Tax Appeal Board." According to defendant's report, plaintiff's property had a value of \$1,355,000. Defendant explained that "due to a lack of access" to plaintiff's property, he could not determine the home's exact square footage, so he relied on county records showing that the home had 10,285 square feet. Defendant's report states that its "INTENDED USER" is "the lender/client" and identifies the "LENDER/CLIENT" as "Tazewell Co. Property Tax Appeal Board."

¶ 5 In November 2008, defendant prepared another appraisal of plaintiff's property. That report states it is "FOR Gary Pittenger, Chairman, Tazewell County Property Tax Appeal Board." In that report, defendant found that plaintiff's property consisted of 4,021 square feet and had a value of \$865,000. The section of the report titled "INTENDED USE AND INTENDED USERS OF THE APPRAISAL" states:

"The intended use of this appraisal is to provide a value estimate for property tax appeal purposes. The intended user of this report is the client, the Tazewell County Property Tax Appeal Board. This appraisal report is prepared for the sole and exclusive use of the intended user, and no third parties are authorized to rely upon this report without express authorization from the appraiser."

¶ 6 In 2009 and 2011, hearings were held before the Illinois Property Tax Appeal Board regarding the value of plaintiff's property. Defendant testified and presented evidence at both hearings on behalf of the Tazewell County Board of Review.

¶ 7 In 2013, plaintiff filed a second amended complaint, alleging that defendant committed "real estate appraisal malpractice" by negligently appraising his property. Attached as exhibits to the complaint are both reports prepared by defendant. Plaintiff's complaint alleges that defendant "was retained by the [Tazewell County Board of Review] to prepare real estate appraisals for the Property." The complaint further alleges that defendant "knew or should have known that his services directly impacted Plaintiff as owner of the property." Additionally, the complaint alleges that defendant "had a duty to [plaintiff] to exercise a reasonable degree of professional care and skill as a real estate appraisal [sic] with reference to ensuring that Plaintiff's Property was accurately appraised and assessed." Finally, plaintiff alleges that defendant breached his duty by preparing inaccurate appraisals and caused him damage.

¶ 8 Defendant filed a motion to dismiss plaintiff's second amended complaint, pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code), 735 ILCS 5/2-615, 2-619 (West 2012), and for sanctions, pursuant to Supreme Court Rule 137, Ill. S. Ct. R. 137 (eff. Jan. 4, 2013). The trial court granted defendant's motion to dismiss and dismissed plaintiff's complaint with

prejudice, pursuant to section 2-615 of the Code, finding that defendant owed no duty to plaintiff. The trial court denied defendant's motion for sanctions, finding that plaintiff's complaint was seeking an "extension of the law."

¶ 9

I

¶ 10 In ruling on a motion to dismiss, a court must interpret the allegations of the complaint in the light most favorable to the plaintiff. *Rutkoski, v. Hollis*, 235 Ill. App. 3d 744, 751 (1992). Exhibits attached to a complaint are considered part of the complaint. *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 14. The court must accept as true all well-pleaded factual matters and all reasonable inferences to be drawn therefrom. *Rutkoski*, 235 Ill. App. 3d at 751. However, it need not accept conclusions of law or conclusions of fact unsupported by allegations of specific facts upon which such conclusions rest. *Id.* We review *de novo* a trial court's dismissal of a complaint. *Kelley v. Carbone*, 361 Ill. App. 3d 477, 480 (2005).

¶ 11 In order to state a cause of action for professional negligence, the plaintiff must allege: (1) the existence of a professional relationship between the plaintiff and defendant that gives rise to a duty of care, (2) a breach of the duty arising from that relationship, (3) causation, and (4) damages. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 129 (2011). For a duty to exist, the plaintiff and the defendant must stand in such a relationship that the law imposes upon the defendant an obligation of reasonable conduct for the plaintiff's benefit. *Kelley*, 361 Ill. App. 3d at 480. Whether a duty exists is a question of law for the trial court. *Schechter v. Blank*, 254 Ill. App. 3d 560, 563 (1993).

¶ 12 As a general rule, a professional owes a duty only to his clients. See *DeLuna v. Burciaga*, 223 Ill. 2d 49, 79 (2006). The only exception to this rule is in limited circumstances when the

professional is hired by a client specifically for the purpose of benefitting a third party. *Id.* For a nonclient's negligence complaint to be sufficient, it must allege facts showing that the purpose and intent of the professional-client relationship was to benefit or influence the plaintiff. *Builder's Bank v. Barry Finkel & Associates*, 339 Ill. App. 3d 1, 8 (2003); *Brumley v. Touche, Ross & Co.*, 139 Ill. App. 3d 831, 836 (1985).

¶ 13 Proof of intent to benefit or influence a third party must be specific. *Blue Waters Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, ¶ 38. A third party's allegation that a professional's work "directly impacted" him is insufficient to establish that the professional owed a duty to him. See *Kopka v. Kamensky & Rubenstein*, 354 Ill. App. 3d 930, 935 (2004). When a plaintiff fails to allege facts showing that the purpose and intent of the professional-client relationship was to benefit or influence the plaintiff, the trial court should dismiss the plaintiff's professional negligence complaint for failure to state a cause of action. See *Pelham v. Griesheimer*, 92 Ill. 2d 13, 19-25 (1982); *Kopka*, 354 Ill. App. 3d at 934-39; *Schechter*, 254 Ill. App. 3d at 564-67; *Rutkoski*, 235 Ill. App. 3d at 751.

¶ 14 Here, plaintiff alleges in his complaint that defendant "had a duty" to him. However, he fails to allege facts supporting such a conclusion. Plaintiff's complaint, which incorporates defendant's reports, establishes that defendant's client was the Tazewell County Property Tax Appeal Board, not plaintiff. Defendant's reports also make clear that defendant's services were provided only for the benefit of the Property Tax Review Board.

¶ 15 While plaintiff alleges in his complaint that defendant "knew or should have known that his services directly impacted Plaintiff as owner of the property," this allegation is insufficient to establish that defendant owed a duty to plaintiff. See *Kopka*, 354 Ill. App. 3d at 935 (a nonclient's allegation that the professional's work "directly impacted" him does not establish a duty). Rather,

plaintiff had to plead facts showing that the purpose and intent of defendant's professional-client relationship with the Tazewell County Property Tax Review Board was to benefit or influence him. See *Builder's Bank*, 339 Ill. App. 3d at 8; *Brumley*, 139 Ill. App. 3d at 836. Since plaintiff failed to allege such facts, the trial court properly dismissed plaintiff's second amended complaint. See *Pelham*, 92 Ill. 2d at 24-25; *Kopka*, 354 Ill. App. 3d at 939; *Schechter*, 254 Ill. App. 3d at 567; *Rutkoski*, 235 Ill. App. 3d at 751.

¶ 16

## II

¶ 17 Defendant asks this court to impose sanctions against plaintiff for his "frivolous appeal." Supreme Court Rule 375(b) provides for the imposition of sanctions where an appeal is frivolous or not taken in good faith but for an improper purpose, such as to harass or to cause an unnecessary delay or a needless increase in the cost of litigation. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). An appeal is not frivolous if it is based on "a good-faith argument for the extension, modification or reversal of existing law." See Ill. S. Ct. R. 137 (eff. Jan. 4, 2013); *Pryor v. United Equitable Insurance Co.*, 2011 IL App (1st) 110544, ¶ 14.

¶ 18 The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys who appear before the appellate court. *Sterling Homes, Ltd. v. Raspberry*, 325 Ill. App. 3d 703, 709 (2001). Sanctions for bad-faith appeals should be imposed only in the most egregious of circumstances. *Janisco v. Kozloski*, 261 Ill. App. 3d 963, 968 (1994). An unsuccessful appeal does not necessarily indicate that the appeal was frivolous. *RBS Citizens, National Ass'n v. RTG-Oak Lawn, LLC*, 407 Ill. App. 3d 183, 194 (2011).

¶ 19 Under the circumstances of this case, we do not find that sanctions would be appropriate. While ultimately unsuccessful, plaintiff's appeal was not frivolous, as it was based on a "good-faith

argument for the extension, modification or reversal of existing law." See Ill. S. Ct. R. 137 (eff. Jan. 4, 2013); *Pryor*, 2011 IL App (1st) 110544, ¶ 14. Thus, we deny defendant's request for sanctions.

¶ 20 The judgment of the trial court of Tazewell County is affirmed.

¶ 21 Affirmed.